

County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



SHERMAN BLOCK, SHERIFF

August 12, 1997

Deputy Leonard Rivas, #[redacted]

Dear Deputy Rivas:

On September 5, 1996, you were served with a Letter of Intention, indicating your right to respond to the Sheriff's Department's pending disciplinary action against you, as reported under File Number IAB 008940. You were also advised of your right to review the material on which the discipline was based.

You did exercise your right to respond, and did review the material on September 12, 1996. After reviewing the response submitted to support your position, the Department executives have amended the recommended discipline.

You are hereby notified that I have suspended you without pay from your position of Deputy Sheriff, Item No. 2708A, with this Department, for a period of three (3) days, effective August 13, 1997, through August 15, 1997.

An investigation under File Number IAB 008940, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

> That in violation of Department Manual of Policy and Procedures sections 3-01/050.30, Off Duty Incidents and/or 3-01/050.10, Performance to Standards, on or about April 6, 1995, you became inappropriately involved in an off-duty incident requiring law enforcement action, in lieu of notifying the local law enforcement agency having jurisdiction.

Prior to imposing this disciplinary action, I have thoroughly reviewed the incident and your record with this Department.

You may appeal the Department's action in this matter pursuant to Rule 18.01(c) of the Civil Service Rules.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

SHERMAN BLOCK, SHERIFF

Original Signed

Marvin J. Dixon, Captain
Norwalk Station

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures and Civil Service Rules.

MJD:NLS:mcw

cc: Civil Service Advocacy
Kennth L. Bayless, Chief, Field Operations Region III
Internal Affairs Bureau
Personnel Services
Payroll Unit
Norwalk Station/Unit Personnel File

SUMMARY OF INVESTIGATION

FILE NUMBER IAB 008940

This investigation began after Internal Affairs Bureau (I.A.B.) investigators were detailed to the scene of a non-hit deputy involved shooting shortly after it occurred.

On April 6, 1995, at 0251 hours, I.A.B. investigators were detailed to [redacted] Kearney Court, Rancho Cucamonga, to investigate the circumstances surrounding shots fired by off-duty Norwalk Station Deputy Leonard Rivas. Investigators first arrived at 0408 hours and observed the weather was cool, clear, and dry. Upon arrival, investigators observed that Sherbrooke Place, north of Emerson Street, was secured from incoming traffic by a marked San Bernardino County Sheriff's unit.

I.A.B. NOTE:

The City of Rancho Cucamonga was patrolled by the San Bernardino County Sheriff's Department. However, the Sheriff's cars were marked as Rancho Cucamonga "police" cars and the Rancho Cucamonga Station was referred to as the Rancho Cucamonga "Police" Department.

The scene was depicted in a series of color photographs which may assist in evaluating the circumstances surrounding the shooting **(EXHIBIT A)**. Also, a map was included to assist in orientation **(EXHIBIT B)**.

The scene location was primarily a residential area that surrounded a school and park. The school and park area was bordered by residences above an embankment on the north, Sherbrooke Place on the west, Fairmont Way on the east, and Emerson Street on the south. Due to the early morning hour, the school was closed and nobody appeared to be in the park.

Sherbrooke Place was a north/south roadway with one unmarked lane in each direction. Investigators observed a yellow diamond shaped sign indicating northbound Sherbrooke Place was "not a through street" from Emerson Street. Upon travelling north on Sherbrooke Place though, investigators were able to access two short east/west cul-de-sac streets. Kearney Court was north of Emerson Street and Rollins Court was north of Kearney Court. Sherbrooke Place extended slightly north, beyond Rollins Court, and ended in a cul-de-sac about 375' north of the north curbline of Kearney Court. The residences north of the location appeared to be at a slightly higher elevation than those along Sherbrooke Place, Kearney Court, and Rollins Court. Additionally, a walkway appeared to extend east and west along the north end of Sherbrooke Place.

Investigators observed a dark gray colored 1993 Nissan pick-up truck (California License plate [redacted]) positioned facing north and slightly east on Sherbrooke Place, between Emerson Street

and Kearney Court. The gray Nissan was about 97' north of the north curbline of Emerson Street and 9' east of the west curbline of Sherbrooke Place.

I.A.B. NOTE:

The resting point of the truck was measured to its center mass. All scene measurements were taken with a roll-a-tape wheel.

Investigators observed extensive apparent collision damage to the driver's side of the truck. The damage extended from the driver's door of the truck to the rear bed. The rear driver's side tire appeared to be flat. The passenger's side window appeared to be broken and the rear window was missing the center sliding portion, which left an open space in the rear window. Investigators also observed what appeared to be bullet strikes on various portions of the truck. Although physical evidence did not reveal the sequence of the bullet strikes, there appeared to be five.

I.A.B. NOTE:

The bullet strikes were photographed along with a long pointer to indicate the approximate path of the bullet as it struck the truck **(EXHIBIT A)**.

One bullet apparently struck the hood of the truck, directed toward the windshield and crossing slightly from the passenger's side toward the driver's side. One bullet apparently struck the windshield post along the driver's side of the windshield, crossing from the passenger's side toward the driver's side. One bullet apparently struck the center of the windshield near the driver's side. The configuration of the oblong hole appeared to indicate that it crossed the interior of the truck through the passenger's side window, from the passenger's side to the driver's side. One bullet apparently struck the top of the driver's door, slightly ahead of the locking post. The grazing damage appeared to indicate that it crossed the interior of the truck through the passenger's side window, from the passenger's side to the driver's side. One bullet appeared to strike the dash assembly and clear instrument cluster plastic on the driver's side. The bullet appeared to cross the interior of the truck, from the passenger's side to the driver's side. An expended bullet jacket remained between the plastic covering and the instrument cluster.

I.A.B. NOTE:

The sequence of the described bullet strikes appeared to indicate that the bullets were fired progressively as the truck approached and passed the position of the shooter. The last bullet hole described was the only one that appeared to strike the truck at an angle indicating the truck had passed the shooter or had been angled away from the shooter.

Investigators observed a concrete style streetlight post that was apparently broken from its base along the east sidewalk of Sherbrooke Place, between Emerson Street and Kearney Court. The pole extended south from the base and was laying across the sidewalk. The light post was about

178' north of the north curbline of Emerson Street. Investigators observed a pair of apparent tire skid marks that curved, as if centrifugal force caused them to arc toward the east. The skid marks crossed the sidewalk and grass leading to the light post. The skid mark that was furthest east appeared to cross very close to the base of the light post.

Further north of the light post, investigators observed several expended 9mm bullet casings laying adjacent to the northwest corner of Sherbrooke Place and Kearney Court. Although they were numbered for photographing, the physical evidence did not reveal which casing landed first, but there appeared to be five "Win" [Winchester] brand casings.

One expended bullet casing was 18' north of the north curbline of Kearney Court and 20' east of the west curbline of Sherbrooke Place. One casing was 24' north of the north curbline of Kearney Court and 20' east of the west curbline of Sherbrooke Place. One casing was 28' north of the north curbline of Kearney Court and 4' east of the west curbline of Sherbrooke Place. One casing was 5' north of the north curbline of Kearney Court and 4' east of the west curbline of Sherbrooke Place. One casing was 18' north of the north curbline of Kearney Court and 6' west of the west curbline of Sherbrooke Place.

I.A.B. NOTE:

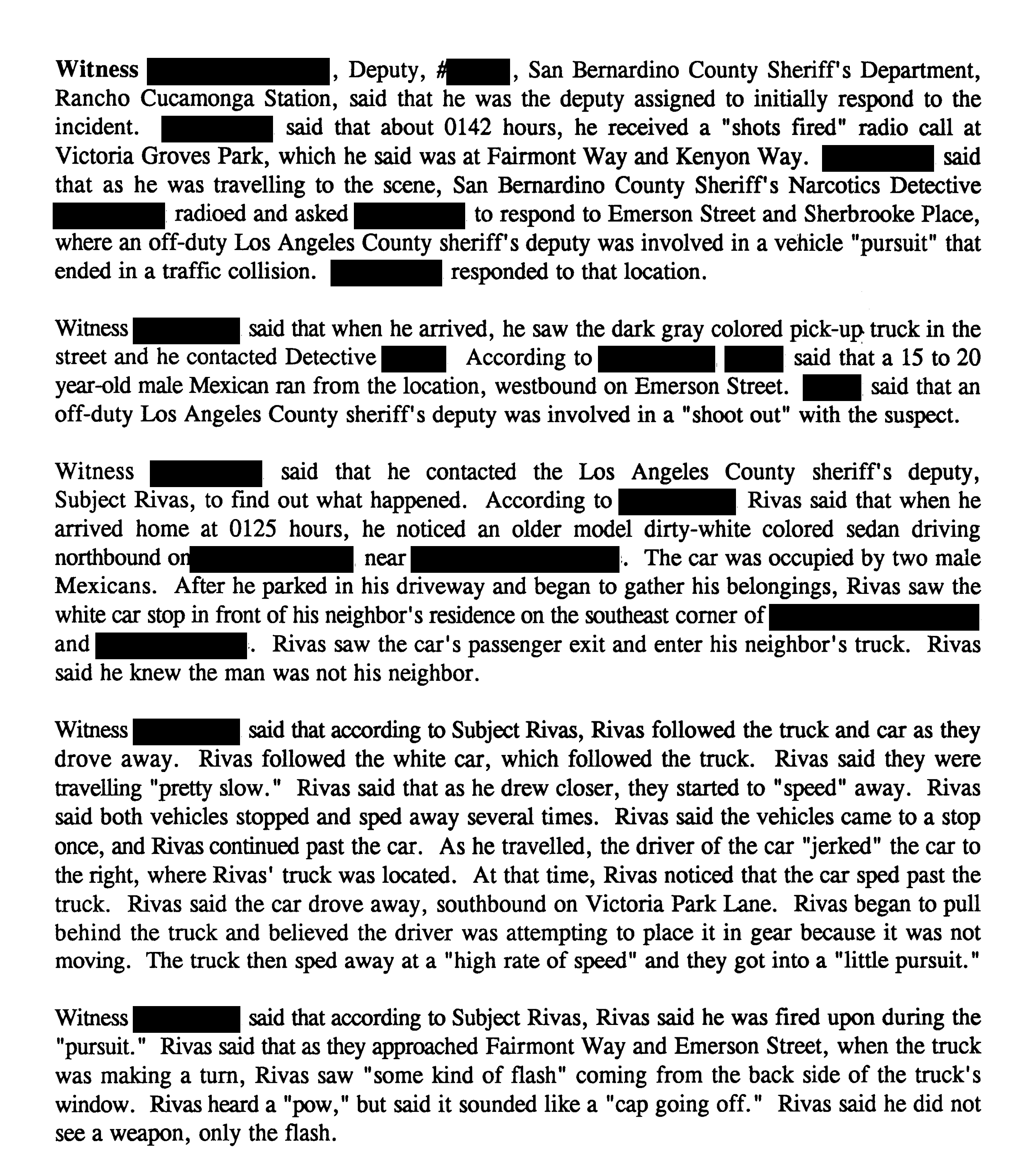
The expended bullet jacket in the instrument cluster was recovered by San Bernardino County sheriff's deputies as evidence and the five expended bullet casings were recovered by I.A.B. investigators as evidence. No expended bullets or bullet fragments were recovered.

Investigators obtained and observed the 9mm Beretta pistol (Serial #BER[redacted]Z) in the possession of Subject Deputy Rivas. Investigators found it loaded with eight live 9mm "Win" bullets. One was in the chamber and seven remained in the magazine.

I.A.B. NOTE:

When questioned later, Subject Rivas said that he did not know how many bullets his pistol was loaded with, but said he tried to keep it loaded with 16.

While at the scene, investigators were advised of another possible location where shots may have been fired. Investigators later responded to Victoria Windrows Loop and recovered another expended bullet casing in the street. The casing was 6' south of the north curbline of Victoria Windrows Loop and 208' east of the east curbline of Locust Avenue. The casing was adjacent to Primrose Place, which ended in a cul-de-sac slightly beyond the north curbline of Victoria Windrows Loop. The 9mm casing had the same "Win" marking as the others. The location surrounding the sixth casing was primarily a residential area.



Witness [redacted], Deputy, #[redacted], San Bernardino County Sheriff's Department, Rancho Cucamonga Station, said that he was the deputy assigned to initially respond to the incident. [redacted] said that about 0142 hours, he received a "shots fired" radio call at Victoria Groves Park, which he said was at Fairmont Way and Kenyon Way. [redacted] said that as he was travelling to the scene, San Bernardino County Sheriff's Narcotics Detective [redacted] radioed and asked [redacted] to respond to Emerson Street and Sherbrooke Place, where an off-duty Los Angeles County sheriff's deputy was involved in a vehicle "pursuit" that ended in a traffic collision. [redacted] responded to that location.

Witness [redacted] said that when he arrived, he saw the dark gray colored pick-up truck in the street and he contacted Detective [redacted] According to [redacted], [redacted] said that a 15 to 20 year-old male Mexican ran from the location, westbound on Emerson Street. [redacted] said that an off-duty Los Angeles County sheriff's deputy was involved in a "shoot out" with the suspect.

Witness [redacted] said that he contacted the Los Angeles County sheriff's deputy, Subject Rivas, to find out what happened. According to [redacted] Rivas said that when he arrived home at 0125 hours, he noticed an older model dirty-white colored sedan driving northbound on [redacted] near [redacted]. The car was occupied by two male Mexicans. After he parked in his driveway and began to gather his belongings, Rivas saw the white car stop in front of his neighbor's residence on the southeast corner of [redacted] and [redacted]. Rivas saw the car's passenger exit and enter his neighbor's truck. Rivas said he knew the man was not his neighbor.

Witness [redacted] said that according to Subject Rivas, Rivas followed the truck and car as they drove away. Rivas followed the white car, which followed the truck. Rivas said they were travelling "pretty slow." Rivas said that as he drew closer, they started to "speed" away. Rivas said both vehicles stopped and sped away several times. Rivas said the vehicles came to a stop once, and Rivas continued past the car. As he travelled, the driver of the car "jerked" the car to the right, where Rivas' truck was located. At that time, Rivas noticed that the car sped past the truck. Rivas said the car drove away, southbound on Victoria Park Lane. Rivas began to pull behind the truck and believed the driver was attempting to place it in gear because it was not moving. The truck then sped away at a "high rate of speed" and they got into a "little pursuit."

Witness [redacted] said that according to Subject Rivas, Rivas said he was fired upon during the "pursuit." Rivas said that as they approached Fairmont Way and Emerson Street, when the truck was making a turn, Rivas saw "some kind of flash" coming from the back side of the truck's window. Rivas heard a "pow," but said it sounded like a "cap going off." Rivas said he did not see a weapon, only the flash.

I.A.B. NOTE:

The I.A.B. investigators searched the stolen truck and did not locate any firearms or expended casings.

Witness [redacted] said that according to Subject Rivas, Rivas said he followed the truck along several streets to the scene.

I.A.B. NOTE:

The I.A.B. investigators eventually re-traced the route travelled by Subject Rivas and learned that the total distance was about five miles.

Witness [redacted] said that according to Subject Rivas, once they turned north onto Sherbrooke Place from Emerson Street, Rivas lost sight of the truck for "a second." Rivas did not know what was "going on" because he did not hear the truck. Rivas said he was seated in his truck in the center of the street at the intersection of Kearney Court and Sherbrooke Place. After a few seconds, Rivas heard a loud "screech" and he pulled along the northwest corner of Kearney Court and Sherbrooke Place. Rivas noticed that the truck was travelling southbound on Sherbrooke Place toward his vehicle at a "high rate of speed," possibly travelling at 30 or 40 miles-per-hour. Rivas said he parked, exited his truck and shot four to five bullets at the truck. Nobody shot at Rivas at that time.

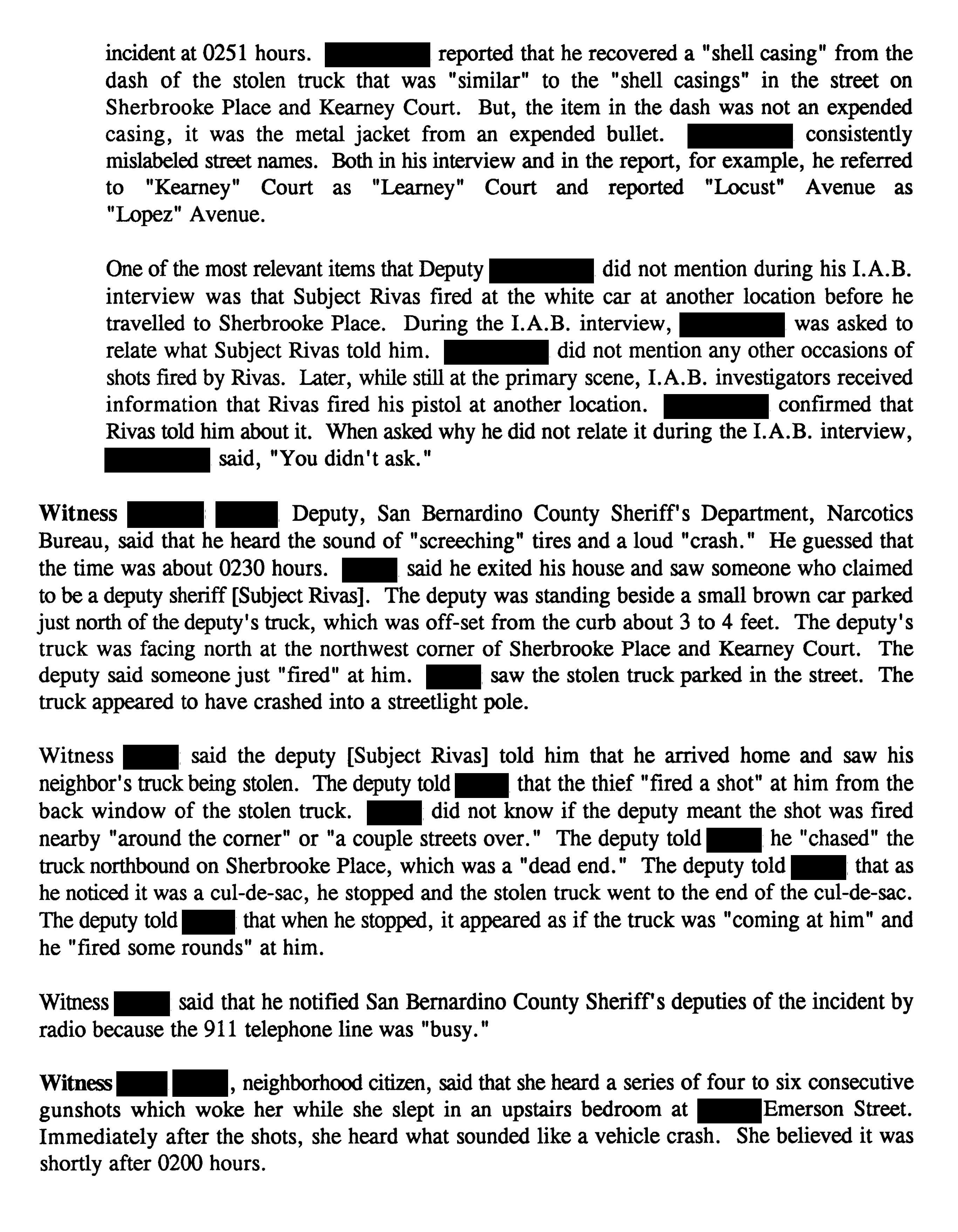
Witness [redacted] said that according to Subject Rivas, Rivas saw the truck "coming at him" and said he "kind of panicked" trying to get his truck into gear. He finally got it into gear and wanted to get out of his truck because he did not want to get hit. Rivas moved left, toward the west curbline, while the truck was travelling toward him. Rivas said he shot the bullets as the truck was "coming at him." [redacted] said he asked Rivas if they were fired toward the front of the gray truck. Rivas said he "saw the front," but was not sure if all of his bullets went there.

Witness [redacted] said that according to Subject Rivas, Rivas "hid" behind his truck for "a second" to see what was "going on." Rivas heard the truck crash and he still hid because he did not know what was "going on." Rivas eventually looked and saw a male Mexican exit the truck and run south on Sherbrooke Place and west on Emerson Street. Rivas then attempted to contact neighborhood residents and was met by Detective [redacted]

I.A.B. NOTE:

Witness [redacted] documented his actions and observations in San Bernardino County crime reports under file numbers 119504360 and 119504363. A traffic collision report was documented by Deputy [redacted], #[redacted], under file number 119504364. All reports were made a permanent part of the file **(EXHIBIT C)**. Witness [redacted] was interviewed prior to the completion of his reports of the incident. A comparison of the report and his statement revealed inaccurate information.

Some examples of the inaccuracies include the following: Witness [redacted] reported that the incident occurred on April 6, 1995, at 0313 hours. But, [redacted] said he received the radio call at 0142 hours. Also, I.A.B. investigators were notified of the



incident at 0251 hours. [redacted] reported that he recovered a "shell casing" from the dash of the stolen truck that was "similar" to the "shell casings" in the street on Sherbrooke Place and Kearney Court. But, the item in the dash was not an expended casing, it was the metal jacket from an expended bullet. [redacted] consistently mislabeled street names. Both in his interview and in the report, for example, he referred to "Kearney" Court as "Learney" Court and reported "Locust" Avenue as "Lopez" Avenue.

One of the most relevant items that Deputy [redacted] did not mention during his I.A.B. interview was that Subject Rivas fired at the white car at another location before he travelled to Sherbrooke Place. During the I.A.B. interview, [redacted] was asked to relate what Subject Rivas told him. [redacted] did not mention any other occasions of shots fired by Rivas. Later, while still at the primary scene, I.A.B. investigators received information that Rivas fired his pistol at another location. [redacted] confirmed that Rivas told him about it. When asked why he did not relate it during the I.A.B. interview, [redacted] said, "You didn't ask."

Witness [redacted] [redacted] Deputy, San Bernardino County Sheriff's Department, Narcotics Bureau, said that he heard the sound of "screeching" tires and a loud "crash." He guessed that the time was about 0230 hours. [redacted] said he exited his house and saw someone who claimed to be a deputy sheriff [Subject Rivas]. The deputy was standing beside a small brown car parked just north of the deputy's truck, which was off-set from the curb about 3 to 4 feet. The deputy's truck was facing north at the northwest corner of Sherbrooke Place and Kearney Court. The deputy said someone just "fired" at him. [redacted] saw the stolen truck parked in the street. The truck appeared to have crashed into a streetlight pole.

Witness [redacted] said the deputy [Subject Rivas] told him that he arrived home and saw his neighbor's truck being stolen. The deputy told [redacted] that the thief "fired a shot" at him from the back window of the stolen truck. [redacted] did not know if the deputy meant the shot was fired nearby "around the corner" or "a couple streets over." The deputy told [redacted] he "chased" the truck northbound on Sherbrooke Place, which was a "dead end." The deputy told [redacted] that as he noticed it was a cul-de-sac, he stopped and the stolen truck went to the end of the cul-de-sac. The deputy told [redacted] that when he stopped, it appeared as if the truck was "coming at him" and he "fired some rounds" at him.

Witness [redacted] said that he notified San Bernardino County Sheriff's deputies of the incident by radio because the 911 telephone line was "busy."

Witness [redacted] [redacted], neighborhood citizen, said that she heard a series of four to six consecutive gunshots which woke her while she slept in an upstairs bedroom at [redacted] Emerson Street. Immediately after the shots, she heard what sounded like a vehicle crash. She believed it was shortly after 0200 hours.

Witness [redacted] said that she looked out her window and saw what appeared to be a young male Hispanic running west on Emerson Street, toward the end of the cul-de-sac. [redacted] did not have experience with gang members and could not determine if the Hispanic appeared to be a gang member. [redacted] was able to see the Hispanic's hands as he ran. She did not see anything in his hands, which were clenched. He appeared to be running as fast as he could and did not appear to be injured. [redacted] said she never saw anyone chase after the Hispanic. [redacted] said the Hispanic eventually ran between the two houses at the end of the cul-de-sac on Emerson Street.

Witness [redacted] said that after she saw the male Hispanic running, she realized he was part of the shooting she just heard. She telephoned 911, but the line was busy. [redacted] friend, who was also in the house, eventually reached the San Bernardino Sheriff's Department by telephone.

I.A.B. NOTE:

The I.A.B. investigators attempted to locate witnesses who made observations that would reveal where bullets were fired and by whom. Also, investigators attempted to locate witnesses who observed the actions of Subject Rivas or the suspects as they travelled from [redacted] to Sherbrooke Place. None were located. Other than those on the truck, no additional bullet strikes were located when the area was checked.

The I.A.B. investigators learned that the shooting incident was not assigned to a San Bernardino County sheriff's detective for investigation. Because of this, the I.A.B. investigators attempted to identify and locate the suspects. With the assistance of San Bernardino County Detective [redacted], I.A.B. investigators researched 911 calls and radio calls/observations handled by deputies that may help to identify the suspects. No information from 911 telephone calls was available because the computer system failed from April 5, 1995 at 2346 hours until April 6, 1995 at 0249 hours.

A review of the radio calls/observations handled by deputies revealed that two male Hispanics were contacted by a deputy on April 6, 1995, at 0204 hours. The Hispanics were near a white Honda Accord at [redacted] Sweet Gum Way, which was less than [redacted] south and west from where the truck was stolen. Because their descriptions were similar to the involved suspects, two photographic "mug" show-up folders were prepared to show Rivas **(EXHIBIT D)**. When researched by I.A.B. investigators, no other radio call/observation information resulted in the identification of suspects.

Subject Leonard Rivas, Deputy, #[redacted], Field Operations Region III, Norwalk Station, said that he has been a patrol deputy since October, 1986, with the exception of one year that he returned to a custody facility.

Subject Rivas said that he was returning home to Rancho Cucamonga after completing his Norwalk Station p.m. shift at [redacted] hours and leaving between 0020 hours and 0030 hours on April 6, 1995. Rivas said that he possessed his Beretta pistol and a personal container of O.C.

spray. He did not have a cellular telephone or any other duty related items. Rivas said he had no extra bullet magazines.

Subject Rivas said that he turned north onto [redacted] from Victoria Windrows Loop and saw two male Hispanics pass him in an older model white or gray colored car. The men turned from southbound [redacted] to westbound Victoria Windrows Loop while Rivas stopped to retrieve his mail. Rivas said it was unusual to see a car driving in his neighborhood at the late hour. Rivas eventually continued and parked his red Nissan pick-up truck facing east on [redacted], just west of [redacted].

Subject Rivas said that as he prepared to enter his house and gathered his belongings, he saw a car that looked like the same car he passed while returning home. The car stopped, facing north on [redacted] just south of [redacted]. Rivas saw the car's passenger exit and approach his neighbor's truck which was parked in the driveway of a house on the southeast corner of [redacted] and [redacted]. The man looked around as if he was worried about someone watching him, opened the driver's door, and entered the truck. Rivas knew the man was not his neighbor. The man backed the truck from the driveway and turned from northbound [redacted] to eastbound [redacted], followed by the car. Rivas formed the opinion that the truck was being stolen because of his observations and the fact that his neighbor mentioned that someone tried to break into the truck in the past.

Subject Rivas believed it was his responsibility to be a "good witness." He believed that in order to be a "good" witness, he needed to obtain the license plate number of the white car before alerting local law enforcement authorities. Rivas followed the vehicles east on [redacted] and placed his Beretta pistol on his lap because he did not know if the suspects were armed.

Subject Rivas said that he had to be close to the license plate in order to read it because of his age or "night vision." As he neared the car on [redacted], the driver of the car "zig-zagged" across the roadway as if to indicate that Rivas would not be allowed to pass. Rivas stopped in the street and the car pulled across the westbound traffic lane and stopped along the north curbline of [redacted]. The truck also stopped in the street. Because of the suspects' actions, Rivas directed his attention away from attempting to read the license plate and to the suspects themselves. Rivas waited and the suspects began moving east again at a normal speed. Rivas approached again and he reached to his glove box for a pen. Rivas saw that the large American car had a "brick red" colored license plate similar to the color of Arizona plates.

Subject Rivas said that he followed the vehicles as they travelled at normal speed. The suspect in the car repeated his "zig-zagging" actions and then both suspects stopped. Rivas also stopped. When the suspects moved again, they increased their speed to between 35 and 40 miles-per-hour and turned south onto Rock Rose Avenue and west onto Victoria Windrows Loop. Rivas said he was not able to read the license plate number when the suspects stopped because he was concerned

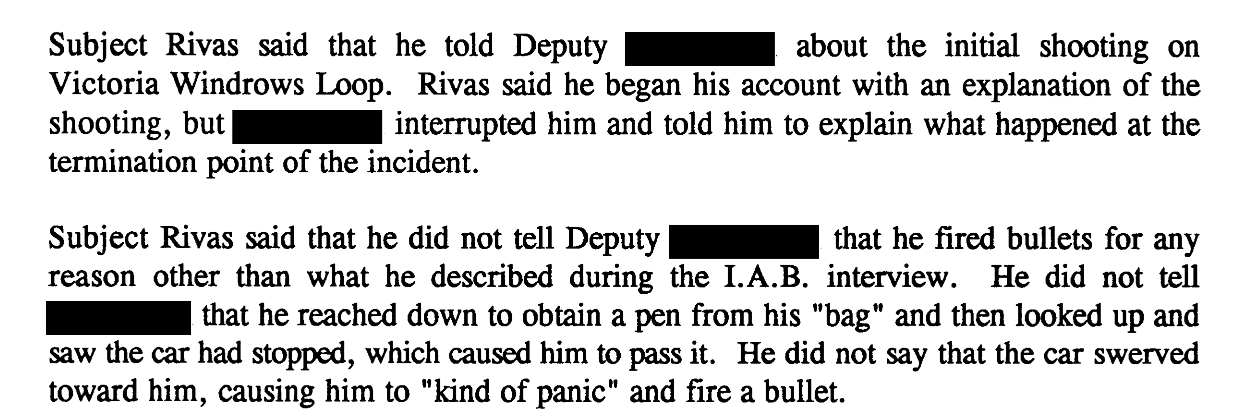
about his safety, as well as the possibility of being shot at. When the suspects moved, they accelerated away from him, preventing him from reading the license plate.

Subject Rivas said that he accelerated to close the distance and obtain the license plate number. He was in a "catch-up mode" and concentrating on the license plate when the car's driver suddenly pulled across the eastbound lanes and stopped along the south curbline. Rivas said he was not able to brake in time to stop behind the car, but he tried to distance himself from the suspect. He pulled to the north curbline, but his momentum caused him to pass the car. Rivas said the truck was stopped in the street ahead of him (Rivas). Rivas was 40 to 60 feet ahead of the car and between 3 and 5 car lengths behind the truck. Rivas believed he was in a "bad position" if the suspect in the car had a gun. Rivas was not able to read the license plate number because he was not ready for the car's sudden stop.

Subject Rivas said that he looked back at the car and saw it suddenly accelerate toward his truck. Rivas believed the car was going to "ram" his truck and believed the "tank" [car] would go through the door of his "aluminum truck." Rivas said he had no time to back-up to remove him from the path of the truck. He believed it was unsafe to exit his truck. Rivas said that he was "scared for his life" and shot at the car in an attempt to "stop" it from hitting him. Rivas did not know if he hit the car, but fired at the side or front of its mass. Rivas said he fired instinctively with his left [weak] hand and believed there was nothing else he could do. Rivas was aware the area was a residential area.

Subject Rivas said that during this time, he placed his right hand on the seat beside him. His hand slipped from the seat because of the mail he placed there. Rivas slipped down to his right and believed his pistol accidentally discharged, creating a second shot. Rivas said that when he looked up, the car passed the front of his truck and rapidly accelerated west on Victoria Windrows Loop and out of sight as the roadway curved southward. The car did not hit his truck and Rivas did not obtain a license plate number. He did not follow the car because the he believed it would be unsafe to pass the truck, which was still stopped in the street.

I.A.B. NOTE:



Subject Rivas said that he told Deputy [redacted] about the initial shooting on Victoria Windrows Loop. Rivas said he began his account with an explanation of the shooting, but [redacted] interrupted him and told him to explain what happened at the termination point of the incident.

Subject Rivas said that he did not tell Deputy [redacted] that he fired bullets for any reason other than what he described during the I.A.B. interview. He did not tell [redacted] that he reached down to obtain a pen from his "bag" and then looked up and saw the car had stopped, which caused him to pass it. He did not say that the car swerved toward him, causing him to "kind of panic" and fire a bullet.

Subject Rivas said that he directed his attention to the truck and shouted something similar to, "Police! Get the fuck out of the truck!" The driver hesitated, but began to drive away. The suspect drove west on Victoria Windrows Loop and turned north on Locust Avenue. Rivas decided not to disengage because he used force against the driver of the car, who was now gone, and the suspect in the truck was the only person left. He decided to follow the truck and still wanted only to alert local law enforcement authorities. Rivas followed the truck as it turned west onto Highland Avenue and south onto Rochester Avenue.

Subject Rivas said that as they travelled south on Rochester Avenue, the truck's driver began a U-turn. Rivas stopped along the west curbline and waited because he did not know if the suspect was armed. Rivas said the suspect drove as if he was going to travel toward him. Rivas backed-up slightly and the truck made a complete circle and travelled south again.

I.A.B. NOTE:

Because of the maneuver, which was similar to that of the suspect driving the car, Rivas was asked if he considered disengaging at that point. Rivas said that although he thought the truck might travel toward him, he never believed it was a threat. Nonetheless, he did back-up to prevent an encounter.

Subject Rivas said that he followed the truck south on Rochester Avenue to westbound Baseline Road. Rivas said the truck reached a break in the raised center median and stopped as if to make a U-turn. Rivas' momentum caused him to pass the truck slightly before he was able to stop. Rivas stopped along the north curbline of Baseline Road. Rivas said the suspect backed-up, straightened the path of the truck, and cut across the lanes toward Rivas within seconds. Rivas tried to place his truck in reverse to back-up, but he was unable to. He believed there was no alternative but to fire bullets at the truck. Rivas fired one bullet from his Beretta pistol in "fear" of his life. He believed the pistol was in his left [weak] hand.

Subject Rivas said that he braced himself with his hand, believing his truck was about to be struck by the suspect's truck. Rivas' foot slipped from the clutch and his truck "kicked" backwards and stalled. The suspect narrowly missed Rivas' truck and eventually continued west on Baseline Road. Rivas said he decided to keep distance between his truck and the suspect because the suspect's actions indicated he did not want to be followed. The suspect travelled at 45 to 50 miles-per-hour. As they drove, small pieces of glass hit Rivas' windshield and he believed his shot may have struck the truck.

I.A.B. NOTE:

Subject Rivas said that he did not believe Deputy [redacted] questioned him about the second shooting scenario. Rivas said that when he first began explaining the entire situation to [redacted] interrupted him and told him to explain the circumstances surrounding the events at the termination point of the incident.

I.A.B. investigators later responded to the area described by Subject Rivas and found that it primarily consisted of open field areas with tracts of houses nearby. No expended bullet casings or bullet strikes were located.

Subject Rivas followed the truck along Baseline Road to northbound Milliken Avenue, to westbound Highland Avenue, to southbound Fairmont Way. By now, the truck was a distance ahead of Rivas and he began thinking that the situation was "getting out of hand." But, Rivas continued to consider the force he used against the suspect and the fact that he still had nothing to offer law enforcement authorities to solve the crime.

Subject Rivas said that as he entered a curve travelling south on Fairmont Way, the suspect was about to exit the curve. During this time, Rivas saw a "flash" from the center of the truck's rear window and heard a "pop" that sounded like a cap gun. Rivas believed he was fired upon with a small caliber firearm. Rivas said he followed the truck as it turned west on Emerson Street and north on Sherbrooke Place. When he turned onto Sherbrooke Place, Rivas lost sight of the truck. Rivas believed he saw a diamond shaped sign indicating that Sherbrooke Place was "not a through street."

I.A.B. NOTE:

Subject Rivas was asked if he considered disengaging after he saw the "flash" from the stolen truck. Rivas said he was "just about" to do that when the vehicles turned onto Sherbrooke Place because he was not sure if it was a "through street." Rivas said he began to consider disengaging and telephoning local law enforcement authorities. Rivas said the situation ended a short distance from where the suspect shot at him. While travelling the distance to the termination point, Rivas said he started to "process" the information, rather than stopping immediately after being shot at.

Subject Rivas said that he stopped his truck in the center of Sherbrooke Place, near Kearney Court, because he did not want to corner the suspect and cause a confrontation on a street that did not continue through to another. A few seconds passed and Rivas believed the suspect may have run from the truck because it was very quiet and dark. Suddenly, Rivas heard tires screeching and saw the headlights of a vehicle travelling at him at 40 to 45 miles-per-hour. Rivas said the vehicle appeared to be the same truck because he saw that it was a gray colored Nissan truck. Rivas believed the suspect would pass and shoot at him.

Subject Rivas said that he wanted to place as much distance between him and the suspect as he could. He decided not to pull to the east curbline because that would align him with the driver's side of the stolen truck. He did not want to exit his truck because it could not be done safely. Rivas tried to drive to the west side of Sherbrooke Place, but he saw the suspect approaching and he was "panicking" and trying to move. Because of this, he shifted into a gear other than first gear and the car lunged forward. Rivas finally arrived at the west curbline and the rear end of his

truck was angled slightly into the street. Rivas saw a small car parked nearby that he believed he could use for cover.

I.A.B. NOTE:

Subject Rivas said that he has owned his 1994 Nissan truck for about one year, has driven vehicles with stick shift transmissions in the past, and was familiar with the operation of his truck's stick shift. Rivas said his performance may have been affected by alternating between driving vehicles with stick shift transmissions and vehicles with automatic transmissions. Also, Rivas said that he may not be "that calm of a person." He said the situation was not a "calm" situation during the occasions that he had difficulty shifting.

Subject Rivas was asked about what prevented him from driving to the end of Kearney Court rather than stopping where he did. Rivas said he only thought about reaching the small car for cover. Rivas said he almost did not even make it to the curb because he was trying to shift his truck into the proper gear. Rivas said he may not have driven to the end of Kearney Court because he may have thought about the possibility of the suspect shooting at him, causing bullets to strike the rear of his truck.

Subject Rivas said that when he arrived at the west curbline of Sherbrooke Place, the suspect was so close to him that he nearly was not able to exit his truck. The suspect drove toward Rivas' truck as if attempting to "ram" it. Rivas exited and believed he would not be able to seek cover in time, so he fired bullets at the suspect trying to "stop' the truck. As he fired, the suspect veered away. Rivas saw the suspect leaning across the seat toward the passenger's side. Rivas believed the suspect was about to shoot at him so he fired bullets as the truck passed. Rivas said he may have fired three or four bullets while holding his Beretta in his right hand. Rivas believed the shooting background was a hillside to the north and a closed school to the east.

I.A.B. NOTE:

Subject Rivas said he told Deputy [redacted] that he fired at the stolen truck because he feared that he was about to be shot at. Rivas explained that he told [redacted] he shot at the truck as it passed because of the threat of being shot at.

Subject Rivas said that after the truck passed him, he ran to a small car parked ahead of his truck. He heard tires screeching and heard a crashing noise. When he looked, Rivas saw the suspect exit from the driver's door and eventually run west on Emerson Street. Rivas said he was not trying to "catch" the suspect, therefore he attempted to seek the assistance of local residents in order to notify law enforcement authorities. Rivas was eventually met by an off-duty San Bernardino County sheriff's deputy who alerted the authorities.

I.A.B. NOTE:

Subject Rivas was shown the two photographic "mug" show-up folders **(EXHIBIT D)**. Rivas said the only person he got a decent look at was the driver of the white car when he initially passed him. Rivas did not recognize anyone in the show-ups.

Subject Rivas was questioned about the statements attributed to him by Deputy [redacted] in his reports and during [redacted] I.A.B. interview. Rivas said that his (Rivas') description of the incident during the I.A.B. interview was the most accurate description of the incident. He noticed that [redacted]'s report and the I.A.B. interview summary contained errors in direction of travel and sequence of events.

Subject Rivas said that at times, information was left out of Deputy [redacted]'s report and interview, or was characterized inaccurately. For example, Rivas never told [redacted] he was involved in a "pursuit." Rivas made marks along the margin of [redacted] report and his I.A.B. interview summary to point out areas that were inaccurate **(EXHIBIT E)**. The I.A.B. investigator highlighted the areas of the exhibit that Rivas disagreed with during his I.A.B. interview.

Subject Rivas said that he did not use the sights of his Beretta to aim it during any of the shots he fired. He used a "point and shoot" technique during the occasions he fired from his truck and a "combat shooting" technique when he fired at the termination point.

Subject Rivas explained his understanding of the Department's policy regarding off-duty incidents: Rivas believed the Department did not want him to get involved "as much as possible." Rivas believed the most important point of the off-duty policy was that the Department did not want him to be involved in off-duty incidents. Rivas believed the Department wanted him to be "a good witness." Rivas recalled Academy training that instructed him to carry change for making a telephone call to local law enforcement authorities. Rivas said the initial theft of the vehicle did not pose an immediate danger to property or persons. Rivas said he never spoke to the chief law enforcement officer in Rancho Cucamonga for permission to take positive police action in an off-duty capacity. Rivas believed the State of California gave him the authority to take action. Rivas said he has not read the Department's policy about off-duty incidents for a long time.

Subject Rivas said that along the route he followed from beginning to end, he considered his available equipment and resources. Because of the unavailability of equipment and resources, he never tried to "catch" the suspects. His priority was to "follow" them.

I.A.B. NOTE:

A few days after the shooting incident, Subject Rivas told the I.A.B. investigator about a dent he saw in the fins of his air conditioning condenser mounted in front of the radiator in his truck. The dent was chemically tested for the presence of lead by Department

firearms expert, William E. Montgomery. Montgomery reported that the dent tested positive for the presence of lead. The test cannot determine if a bullet specifically caused the dent, only that lead was present. The approximate 1/2" rounded, concave dent was photographed **(EXHIBIT F)**.

All firearms related evidence was gathered and submitted to William Montgomery for testing to determine if it originated from one or more firearms. All expended casings, as well as the expended bullet jacket, were fired from Rivas' Beretta. Montgomery prepared a report listing his actions and observations regarding the lead test and firearms testing **(EXHIBIT G)**.

In total, 6 expended bullet casings were recovered between two shooting locations and 8 live bullets remained in Rivas' pistol. The physical evidence, coupled with Rivas' statements indicate there were 8 rounds fired throughout the course of the incident (2 shots fired, then 1 shot, and finally 5 shots). This number is consistent with Rivas' weapon having initially been loaded to capacity with 16 bullets. Also, per S.A.S Escalante at the Department range, Rivas qualified with the Beretta on February 23, 1995, scoring 277.

As of June 29, 1995, no suspects have been identified or located by San Bernardino County sheriff's deputies or I.A.B. investigators. Also, no additional evidence has been located throughout the neighborhood surrounding the shooting scenes.

Witness Michael Janovich, Sergeant, #[redacted], Professional Standards and Training Division, Advanced Training Bureau, Laser Village Training, said that he had experience as a Field Training Officer at Industry Station, as a Scout on a Special Weapons Team at the Special Enforcement Bureau, and as a supervisor/instructor at Laser Village Training. Janovich reviewed the completed Internal Affairs Bureau investigation to offer an opinion in light of his expertise.

Witness Janovich said that upon his review of the case, he was concerned with certain issues. First, Deputy Rivas was off-duty. Janovich said Rivas originally followed the stolen truck and white car in order to be a "good witness." Janovich said that once Rivas became involved, he was at risk. Janovich said that Laser Village training and past established training stressed that off-duty personnel do not have sufficient equipment to handle situations (i.e., radios, handcuffs, and extra bullet magazines). Also, Janovich said off-duty personnel lack sufficient back-up. Janovich said that while driving civilian cars, off-duty personnel are not readily recognizable as peace officers. Janovich said that no matter how much someone wants to become involved, they must realize the aforementioned limitations and "back off."

Witness Janovich said that based on his training and experience, coupled with the Department's training regarding off-duty situations, he believed there was a specific point where Deputy Rivas should have disengaged. Janovich said that once the white car initially began swerving back and forth, Rivas should have disengaged. Janovich said that the swerving action of the driver of the white car indicated that the driver was aware of Rivas' presence. Janovich said that Rivas should

have realized the driver was aware of his presence and disengaged because of his lack of sufficient equipment. Janovich said even though Rivas was attempting to be a good witness by obtaining the license plate number of the car, once its driver became aware of his presence, Rivas should have disengaged and telephoned local law enforcement authorities.

Witness Janovich said that Deputy Rivas could have been a "good witness," even without obtaining the license plate number of the white car. Janovich said that if Rivas would have immediately notified local law enforcement authorities, they may have located both vehicles, since they were travelling together in the early morning hours in an area where few vehicles were on the road. Also, Rivas had a good description of the suspects' car and his neighbor could have provided the license plate number of the stolen truck. Janovich said that having the license plate number would be "great," but he did not believe it was necessary for Rivas to endanger his life in an effort to apprehend auto theft suspects.

When asked to offer an opinion about the circumstances of the case beyond the point where the white car swerved, Witness Janovich said that Deputy Rivas should have disengaged. At the point where Rivas fired the first shot, he should have disengaged because the incident rose to the level of an assault with a deadly weapon (vehicle) against Rivas. Because he was off-duty and lacked the proper equipment/back-up, Rivas should have disengaged. Janovich said Rivas did not need to follow either vehicle from that point, because he could have notified law enforcement authorities even if the suspects eluded him. Janovich said it was unnecessary for Rivas to follow the vehicles out of concern that he used his firearm. Janovich based his opinion on his training and experience.

I.A.B. NOTE:

From this point, the I.A.B. investigator spoke with Witness Janovich about the remaining incidents of interaction between Deputy Rivas and the suspect in the truck. Consistently, Janovich opined that Rivas should have disengaged because he was off-duty and lacked sufficient equipment/back-up. Janovich said that Rivas' actions were inconsistent with Department training.

When asked about Deputy Rivas' desire be a "good witness" in conjunction with his obligation to take law enforcement action upon observing a crime, Witness Janovich said he believed Rivas could fulfill his peace officer obligation by simply telephoning local law enforcement authorities. Janovich said Laser Village instruction includes a scenario that encourages deputies to observe and report an off-duty crime rather than interjecting themselves into the situation as a peace officer. Janovich said the training is based on the lack of proper off-duty equipment, insufficient back-up, and problems associated with properly being identified as a peace officer.